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File No. O Mamlatdars Ct 1/42

Legal DEPARTMENT

'A' BRANCH (p & E)

Subject:—

Opinions under the Mamlatdars Courts Act, 1906

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Submitted.

Please see letter from the Collector of Poona and Commr. C.D. of pp.1 and 5 ante.

The question for the consideration of the R.L.A. is whether Mr. Action, Extra P.A. to the Collector of Poona, who seems to have been delegated revenue jurisdiction over the whole of the district under section 10 of the Bombay Land Revenue Code, 1879, can exercise the power of revision conferred upon the Collr. by sub-section (2) of section 23 of the Mamlatdar's Courts Act, 1906 (Bombay II of 1906).

2. Undersection 23 (1) of the Mamlatdars' Courts Act, 1906, no appeal shall lie from any order passed by a Mamlatdar under the Act. But subsection (2) of that section gives to the Collr. the power to call for and examine the record of any suit and x to pass an appropriated order therein. "Collector" has not been defined in the Act; but section3 (11) of the Bombay General Caluses Act, 1904, defines it to mean "the Chief Officer in charge of the revenue adminis ration of a district". The power to a administratbe revenue matters throught the district seems to have been delegated by the Collr. under section 10 of the B.L.R. Code, 1879, to Mr. Acton; and he would appear to be "the chief officer in charge of the district". But the Definition in section 3(11) of the General Clauses Act is, under the opening words of section3, applicable unless there is anything repugnant in the subject or context. This definition is not applicable in the case of the Mamlatdars Courts Act. In Sonu vs. Arjun, 17 Bom. L.R. 579 at pp. 583 Scott C.J. has pointed out that absurd conclusion would be reached if it were held otherwise; . It is true that in Keohaw

Keohaw Vs. Jairam, I.L.R. 36 Bom. 123 it was held that by virtue of section 10 of the B.L.R. Code, an Asst . Collr. in charge of portions of a District was entitled to exercise the revisional powers of the Collr. under section 23 of the Mamlatdars Courts Act. But this decision has also been considered by Scott C.J. and it is no longer good law. A similar observation has also been made by Macelod C.J. in Venkatesh Keval Vs. Bhiku Venkatesh , I.L.R. 45 Bom. 1135 at p. 1136. It appears therefore that the power under section 23(2) can be exercised by the Collr. alone and not be any of his assistants. If it is desired to relieve the Collectors of this work, legislation would be necessary.

Id/- W.D.D.
13/7/42

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Office of the R.L.A.

In Sonu Vs. Arjun (17 B.L.R. 579) the High Court of Bombay has held that the term "Collector" section 23 of the Bombay Mamlatdars' Courts Act, 1906, does not include a District Deputy Collector and the District Deputy Collector has no aut ority to pass any order under the Act, the reason being that although the District Deputy Collecotr exercises powers of the Collector by virtue of delxegation under sectio 10 of the Land Revenue Code1879, it would be absurd to hold that the District Dep uty Collector can by virtue of such delegation exercise powers of the Collector under the Mamlatdars' Courts Act, for the words "any law for the time being in force" in section 10 of the Land Revenue Code must relate to any law ejusdem generies with the Land Revenue Code and would not embrace the special law relating to the Mamlatdars' Courts Act, 1906. The fact that Mr. Acton extra Personal Assistant to the Collector, Poona, has been placed in charge of the revenue administration of all the Talukas in the district of Poona, does not seem to make any difference for he is also invested with such power by virtue of section 10 of the Land Revenue Code and consequently the legal objection to a District Deputy Collector exercising the powers of the Collector under the Mamlatdars' Courts Act as decided by the High Court in Sonu Vs. Arjun(17 B.L.R. 579) will still hold good in the case of exercise of such jurisdiction by Mr. Acton. The view taken by the Collector Poona, in his letter at page 1 ante is correct. The only course feasible for the purpose would be suitably to amend the Mamlatdars' Courts Act, 1906.

Id/- P.M.M.
16/7

Remembrancer of Legal Affai

U.R. to H.D.,No., 5816, dated the 17th July 1942.

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